

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

CAROLYN J. O'LEARY, individually
and on behalf of all other similarly
situated individuals,

Plaintiff,

v.

Case No. 1:17-cv-01774-WCG

HUMANA INSURANCE COMPANY and
HUMANA INC.,

Defendants.

**DEFENDANTS' UNOPPOSED MOTION TO WITHDRAW ADMISSION TO
PLAINTIFFS' REQUEST FOR ADMISSION NUMBER 44**

Defendants respectfully make this unopposed motion under Fed. R. Civ. P. 36(b) to withdraw their admission to Plaintiffs' Request for Admission (RFA) No. 44 because (1) the admission was an honest error, and Plaintiff has advised that she does not oppose the withdrawal in light of supporting declarations; (2) withdrawal would "promote the presentation of the merits of the action," and (3) withdrawal will not "prejudice the requesting party in maintaining . . . the action on the merits." *Id.* The purpose of the withdrawal is to clarify that nurses with the title "Quality Initiatives – Senior Products" (QI Nurses) do not perform utilization management (UM) and therefore should not be part of the collective in this case.

RFA No. 44 asked, and Defendants answered, as follows:

Request for Admission Nos. 35-44: Separately for each of the following, admit that the primary job duty of the Clinical Nurse Advisor employed by Humana working in the following departments was Utilization Management:

* * *

44. Quality Initiatives – Sr Prd

RESPONSE: Admitted that the primary duty of the Clinical Nurse Advisor in the Quality Initiatives – Sr Prd department was Utilization Management.

This admission was an honest error. After further investigation, Defendants have determined that QI nurses do not perform UM, nor did they during the relevant time period. Before submitting this motion, Defendants procured two declarations: one from a longtime manager of QI Nurses and the other from a former QI Nurse and current manager of QI Nurses. The declarations state that QI Nurses primarily help healthcare providers improve their performance and quality metrics, and further that QI Nurses do not perform UM, do not receive training in UM, do not know how to complete UM, and do not have full access to the database system that would permit them to perform UM. This is consistent with the deposition testimony of Defendants' corporate-representative witness, who likewise stated that QI Nurses do not perform UM. Accordingly, QI Nurses are outside the scope of the collective definition, which includes only nurses who primarily perform UM. Dkt. No. 23.

After reviewing the declarations, Plaintiff's counsel advised that she would not oppose this motion.

Withdrawal of an admission is permissible "when through an honest error a party has made an improvident admission." *Allianz Glob. Risks U.S. Ins. Co. v. Kutzler Express, Inc.*, No. 15-cv-1047-JPS, 2016 WL 6108774, at *3 (E.D. Wis. Oct. 19, 2016) (citations omitted). The Federal Rules advisory committee "opined that the provision for withdrawal or amendment of an admission is meant to 'emphasiz[e] the importance of having the action resolved on the merits, while at the same time assuring each party that justified reliance on an admission in preparation for trial will not operate to his prejudice.'" *Id.* (quoting Fed. R. Civ. P. Advisory Committee Notes). Both purposes are served here.

WHEREFORE, Defendants respectfully request the Court grant this Motion and allow Defendants to withdraw their Admission to Plaintiff's Request for Admission No. 44.

Dated: May 12, 2021

/s/ James M. Coleman

James M. Coleman
jcoleman@constangy.com
Maureen R. Knight
mknight@constangy.com
Jason D. Friedman
jfriedman@constangy.com
Constangy, Brooks, Smith & Prophete, LLP
12500 Fair Lakes Circle, Suite 300
Fairfax, Virginia 22033
(571) 522-6100
(571) 522-6101 (fax)

/s/ Scott C. Solberg

Scott C. Solberg
ssolberg@eimerstahl.com
James W. Joseph
jjoseph@eimerstahl.com
EIMER STAHL LLP
224 South Michigan Ave., Suite 1100
Chicago, IL 60604
(312) 660-7600
(312) 692-1718 (fax)

/s/ Ryan J. Walsh

Ryan J. Walsh
rwalsh@eimerstahl.com
EIMER STAHL LLP
10 East Doty Street, Suite 800
Madison, WI 53703
(608) 441-5798
(608) 441-5707 (fax)

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of **DEFENDANTS' UNOPPOSED MOTION TO WITHDRAW ADMISSION TO PLAINTIFFS' REQUEST FOR ADMISSION NUMBER 44** to be served on all parties and counsel via the Court's ECF system this 12th day of May, 2021.

/s/ James M. Coleman

James M. Coleman

ATTORNEYS FOR DEFENDANTS